

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**MISSION HOUSING DEVELOPMENT  
COMPANY et al.,**

**Plaintiffs and Appellants,**

**v.**

**CITY AND COUNTY OF SAN  
FRANCISCO,**

**Defendant and Appellant.**

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**A085462**

**(San Francisco Super.  
Co. No. 920940)**

This is an appeal and cross-appeal from a judgment in an action seeking a refund of property taxes. Mission Housing Development Company et al. (hereafter Taxpayers) contend the trial court erred when it (1) refused to order the City and County of San Francisco to value their property at certain levels for certain tax years, and (2) declined to award them attorney fees. The City and County of San Francisco contends the trial court erred when it determined the amount that it must refund to Taxpayers.

We will conclude on the appeal that (1) the trial court correctly declined to order San Francisco to value Taxpayers' property as requested, and (2) Taxpayers have not timely challenged the court's decision to deny their request for attorney fees. On the cross-appeal, we agree the court erred when determining the amount that San Francisco must refund to Taxpayers and will reverse that portion of the judgment.

## I. FACTUAL AND PROCEDURAL BACKGROUND

We have dealt with this case before (see *Mission Housing Development Co. v. City and County of San Francisco* (1997) 59 Cal.App.4th 55, [hereafter *Mission Housing*]) so only a brief statement of facts is necessary.

Taxpayers are 11 corporations and limited partnerships that own low income housing projects located in San Francisco. In June 1990, they filed a complaint against San Francisco seeking a partial refund of the property taxes they had paid for the 1982-1983 through 1987-1988 tax years. The case was tried by a judge who ruled Taxpayers were not entitled to any refund. Taxpayers then filed an appeal to this court.

Taxpayers raised several issues on appeal only two of which are relevant at this point. First, they argued San Francisco was required, under Revenue and Taxation Code<sup>1</sup> section 1604, subdivision (c),<sup>2</sup> to place on the assessment rolls for tax purposes, the property values Taxpayers had submitted to the assessment appeals board in their application for a reduced assessment. (*Mission Housing, supra*, 59 Cal.App.3d at pp. 73-74.) We agreed and held that Taxpayers were “entitled to have their opinions of value, as stated in their applications for reduction in assessment, inserted on the assessment [rolls] . . .” (*Id.* at pp. 62-63.) However we ruled Taxpayers were entitled to that remedy “only with respect to tax years 1985-1986 and 1986-1987.” (*Id.* at p. 63.)

Second, Taxpayers claimed they were entitled to an award of attorney fees under Government Code section 800. (*Mission Housing, supra*, 59 Cal.App.3d at p. 87.) We declined to decide that issue and instead, remanded in light of our

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<sup>1</sup> Unless otherwise indicated, all further section references will be to the Revenue and Taxation Code.

<sup>2</sup> Section 1604, subdivision (c) states, “If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer’s opinion of market value as reflected on the

partial reversal to the trial court so it could determine, in the first instance, whether an award of fees under that section was appropriate. (*Id.* at pp. 87-88.)

On remand, the trial court bifurcated the valuation issues from the issue of whether Taxpayers were entitled to an award of attorney fees. On the valuation question, the court ruled Taxpayers were entitled to have their opinions of value, as stated in their application for reduction in assessment, inserted on the assessment rolls for the 1985-1986 and 1986-1987 tax years. The court declined Taxpayers' request to have their opinions of value inserted on the assessment rolls for years other than 1985-1986 or 1986-1987. The court also determined the amount that San Francisco must refund to Taxpayers.

This appeal and cross-appeal followed.

Subsequently, the trial court ruled Taxpayers were not entitled to an award of attorney fees under Government Code section 800.

## II. DISCUSSION

### A. Taxpayers' Appeal

#### 1. Valuation Issues

Taxpayers contend the trial court erred when it refused to order that their opinions of value, as stated in their applications for reduction in assessment, be inserted on the assessment rolls for tax years other than 1985-1986 or 1986-1987. We are unpersuaded.

Our prior opinion could not have been more clear. We ruled Taxpayers were entitled to have their opinions of value inserted on the tax rolls "only with respect to tax years 1985-1986 and 1986-1987." (*Mission Housing, supra*, 59 Cal.App.4th at p. 63.) The trial court was obligated to follow our direction and lacked jurisdiction to do otherwise. (See *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655-656.)

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application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application . . . ."

Taxpayers contend the trial court should have ordered their opinions of value inserted on the tax rolls for additional years because the reasoning we used in our prior opinion when holding that Taxpayers were entitled to have their opinions of value inserted for the 1985-1986 and 1986-1987 tax years, applied equally to other tax years. However if Taxpayers believed that argument had merit, they should have asserted it in the prior appeal. “A trial court may not exceed the specific directions of a court of review in remanding a cause after a reversal of the judgment on appeal and add thereto conditions which it assumes the reviewing court should have included.” (*English v. Olympic Auditorium, Inc.* (1935) 10 Cal.App.2d 196, 201.)

The court in *Skaggs v. City of Los Angeles* (1956) 138 Cal.App.2d 269 (*Skaggs*), applied this principle when faced with facts similar to those presented here. In *Skaggs*, a policeman who had been discharged, sued the City of Los Angeles to recover pension benefits. The trial court ruled the policeman was entitled to benefits for a portion of the period requested, and ordered Los Angeles to pay interest on those benefits. The policeman filed an appeal claiming the trial court erred when it failed to award him benefits for the entire period in question. The Supreme Court agreed and it reversed that portion of the judgment. The court did not express any view on the propriety of the interest award. (*Id.* at pp. 270-271.) On remand, the trial court granted the policeman benefits for the entire period at issue, but *declined to award him any interest.* (*Id.* at pp. 271-272.) The policeman appealed again claiming the trial court erred when it failed to award him interest. The appellate court agreed that interest was not legally authorized, but ruled the trial court was required to award interest for the period covered by the first judgment because that judgment had been partially affirmed on appeal. As the court explained, the first judgment “insofar as it awarded plaintiff pensions . . . together with interest thereon . . . was affirmed by the Supreme Court, and the trial court was reinvested with jurisdiction not to determine any of those matters . . . Its jurisdiction was defined by the terms of the remittitur and it was only

empowered to act in accordance with the directions of the Supreme Court, as set forth in the remittitur. Any action beyond that was void. . . . The fact that the Supreme Court did not expressly pass upon the interest feature of the judgment does not affect this matter. . . . If, due to the city's neglect to direct its attention to this phase of the judgment of the lower court, the Supreme Court failed to pass upon this question, the city's remedy was to petition for a rehearing, and it was not for the trial court, on the second trial, to attempt to change the specific directions contained in the remittitur. [Citation.]" (*Id.* at pp. 272-273.)

Here, as in *Skaggs*, even if we were to assume that the reasoning we used in our prior opinion when holding that Taxpayers were entitled to have their opinions of value inserted for the 1985-1986 and 1986-1987 tax years, applied equally to other tax years, the time to make that argument was in the prior appeal. Counsel for taxpayers acknowledged at oral argument that taxpayers did not advance this argument in *Mission Housing*. Taxpayers may not do so in this proceeding.

We conclude the trial court correctly followed our direction in our prior opinion and ruled Taxpayers were entitled to have their opinions of value placed on the tax rolls "only with respect to tax years 1985-1986 and 1986-1987."

(*Mission Housing*, *supra*, 59 Cal.App.4th at p. 63.)

## 2. Attorney Fees

The trial court issued three different judgments on the valuation issues. In each, the court stated that it was bifurcating the valuation issues from the issue of whether Taxpayers were entitled to an award of attorney fees. The first judgment, filed August 20, 1998, states that Taxpayers' entitlement to attorney fees would "be determined in a subsequent hearing." The second, a modification of the August 20 judgment that was filed on October 19, 1998, states that Taxpayers "shall be awarded . . . attorneys fees in a subsequent hearing to be scheduled [by the] court." The third and final judgment (modifying the October 19 judgment) was filed on December 17, 1998. It too states that the Taxpayers "shall be

awarded . . . attorneys fees in a subsequent hearing to be scheduled before [the] court.”

A hearing on the attorney fee issue was finally held on February 9, 1999. On February 23, 1999, the court filed an order stating Taxpayers were not entitled to fees under Government Code section 800 because there was “no evidence of . . . arbitrary or capricious actions by the Defendants.”

Taxpayers now contend the trial court erred when it ruled they were not entitled to an award of attorney fees. We need not address this argument because Taxpayers have not filed an appeal from the court’s decision to deny their request for fees.

Taxpayers filed a notice of appeal on December 18, 1998 from the final judgment on valuation issues that was filed on December 17, 1998. Taxpayers never filed a second notice of appeal from the court’s February 23, 1999 order denying their request for fees. An order granting or denying attorney fees is a separately appealable order. (See *Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) We lack jurisdiction to consider a ruling from which an appeal has not been taken. (See *Fish v. Guevara* (1993) 12 Cal.App.4th 142, 147.)

Taxpayers seek to avoid this conclusion by contending the court awarded them attorney fees in the August 20, 1998, October 19, 1998, and December 17, 1998 judgments, and merely left the *amount* of fees to be determined at a subsequent hearing. According to Taxpayers, the February 23, 1999 judgment is “void and without any effect” because *San Francisco* never challenged the earlier judgments by filing a proper motion to vacate under Code of Civil Procedure section 663.

We reject this argument for two reasons. First, Taxpayers assume that a “void” order is not appealable. This is simply incorrect. (See *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370.) Taxpayers were required to file an appeal from the February 23, 1999 order even if it was “void.”

Second, reading the August 20, 1998, October 19, 1998, and December 17, 1998 judgments together, it is clear the court did not award attorney fees to Taxpayers intending to determine the amount at a subsequent hearing. Rather, the court intended to and did defer the *entire* fee issue, including the question of whether San Francisco's conduct was arbitrary and capricious within the meaning of Government Code section 800. When the court finally decided that issue on February 23, 1999, it entered an appealable order. (*Soldate v. Fidelity National Financial, Inc.*, *supra*, 62 Cal.App.4th at p. 1073.) Since Taxpayers have not filed an appeal from that order, they cannot challenge the validity of the court's ruling on appeal.

#### B. Cross-Appeal

San Francisco contends the trial court erred when it determined the amount it must refund to Taxpayers for the 1985-1986 and 1986-1987 tax years. To understand these arguments, some further background is necessary.

Taxpayers originally filed applications for reduction in assessment with the assessment appeals board listing what they now concede are artificially low values for their property. At the hearing before the board held in October 1988, Taxpayers then *amended* their opinions of value to somewhat higher levels.

After the assessment appeals board denied Taxpayers' request to reduce the assessed values of their properties, Taxpayers filed an administrative claim for a refund with the San Francisco Board of Supervisors. San Francisco contends, and the record shows, that the claim requested a refund based primarily on the amended values that Taxpayers had submitted at the hearing before the assessment appeals board. The Board of Supervisors denied Taxpayers' claim.

Taxpayers then filed the underlying complaint seeking a refund of the excess taxes they had paid. The trial court ruled Taxpayers were not entitled to any refund, so they filed an appeal to this court. On appeal, we ruled, *inter alia*, that Taxpayers were "entitled to have their opinions of value, as stated in their applications for reduction in assessment, inserted on the assessment [rolls] . . .

[for] tax years 1985-1986 and 1986-1987.” (*Mission Housing, supra*, 59 Cal.App.4th at pp. 62-63.)

On remand, the trial court followed our direction and ruled that Taxpayers’ opinions of value as stated on their applications for reduction in assessment must be inserted on the assessment rolls for the 1985-1986 and 1986-1987 tax years. However the court was also required to address a new issue that was not within the scope of the prior appeal. Specifically, the court had to decide how to calculate the amount that San Francisco must refund to Taxpayers for the 1985-1986 and 1986-1987 tax years.

Taxpayers argued that the refund should be measured by the difference between the amount they had paid in taxes, and the amount that was due based on the concededly low property values which they listed in the applications for reduction in assessment filed with the assessment appeals board. San Francisco took the position that the refund should be measured by the difference between the amount Taxpayers had paid, and the amount due based on the amended (and somewhat higher) property values Taxpayers had submitted in their claim for a refund to the San Francisco Board of Supervisors. The trial court accepted Taxpayers argument. San Francisco now contends the trial court erred. We agree.

Section 5142 states that an action seeking a refund of taxes paid “shall [not] be commenced or maintained . . . unless a claim for refund has first been filed . . . .”

Section 5143 states, that “If a claim for refund relates only to the validity of a portion of an assessment, *an action may be brought . . . only as to that portion.*” (Italics added.)

Reading these two statutes together, we conclude that a taxpayer who files a refund action can recover no more than the amount he sought in his underlying claim.

Here, Taxpayers filed a claim with the San Francisco Board of Supervisors seeking a partial refund measured by the difference between the taxes they had

paid, and the amount due based on the higher *amended* property values which they had submitted at the hearing before the assessment appeals board.<sup>3</sup> Taxpayers did *not* seek a refund based on the lower property values that they submitted in their applications to the assessment appeals board. Under the plain language of sections 5142 and 5143, Taxpayers could only file suit to recover, and the court could only award, the amount Taxpayers had submitted in their claim for a refund. We conclude the court erred when it ordered San Francisco to refund taxes based on the property values Taxpayers had submitted in their applications to the assessment appeals board.

The result we reach is consistent with case law. The general rule applicable in tax cases is that the “claim for refund delineates and restricts the issues to be considered in a taxpayer’s refund action.” (*Atari Inc., v. State Bd. of Equalization* (1985) 170 Cal.App.3d 665, 672, citation & fn. omitted; see also *Jimmy Swaggart Ministries v. State Bd. of Equalization* (1988) 204 Cal.App.3d 1269, 1290.) Our conclusion is also consistent with the rule that statutes governing administrative tax refunds procedures must be strictly enforced. (*Kuykendall v. State Bd. of Equalization* (1994) 22 Cal.App.4th 1194, 1203.)

Taxpayers contend they are entitled to a refund based on the values they submitted in their applications to the assessment appeals board because, in the prior appeal, we ruled Taxpayers were “entitled to have their opinions of value, as

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<sup>3</sup> At oral argument, Taxpayers asserted that they also sought a refund based on the values they submitted in their applications for reduced assessment under section 1604. The record does not support the assertion. Taxpayers’ claim for a refund states, in pertinent part, “Attached hereto, marked ‘Exhibit A’ and incorporated herein by reference as though set forth in full at this point, is a list showing the values which in Claimants’ opinions the Board should have set for each property for each year in question. *The difference between these values and the values . . . in fact set by the Board . . . when multiplied by the annual tax rate in force for each property for each year in question, equals the amount of the property tax refund requested for each of the properties for each year in question.*” (Italics added.)

stated in their applications for reduction in assessment, inserted on the assessment [rolls] . . . [for] tax years 1985-1986 and 1986-1987.” (*Mission Housing, supra*, 59 Cal.App.4th at pp. 62-63.) However Taxpayers’ argument is premised on the assumption that a party’s right to a refund is invariably based on the values that are on the tax rolls. That is incorrect. “There is a distinction between the reduction in a base-year value and a right to a refund of taxes.” (*Osco Drug, Inc. v. County of Orange* (1990) 221 Cal.App.3d 189, 193; see also *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 34.) “Correction of the base-year value figure does not automatically entitle the taxpayer to a refund. [Citation.] Refunds are governed by separate provisions of the code, and the taxpayer may only recover a refund by complying with those statutes. [Citation.]” (*Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948, 961.)

Here, while we ruled in the prior appeal that Taxpayers were entitled to have their opinions of value, as stated in their applications for reduction in assessment, inserted on the tax rolls for the 1985-1986 and 1986-1987 tax years, we did not state, nor did we imply, that the court was obligated to calculate Taxpayers’ refund based on those values. Rather, Taxpayers were obligated to comply with the statutes governing refunds. The manner in which Taxpayers complied with those statutes effectively limited the amount they were entitled to recover.

### III. DISPOSITION

The judgment is reversed to the extent it determines the refund to which Taxpayers are entitled for the 1985-1986 and 1986-1987 tax years. That refund must be calculated based on the property values Taxpayers submitted to the Board of Supervisors in their claim for a refund.

In all other respects, the judgment is affirmed. Costs on appeal are awarded to the City and County of San Francisco.

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Jones, P.J.

We concur:

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Stevens, J.

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Kramer, J.\*

\* Judge of the Superior Court of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**Filed 6/9/00**

**CERTIFIED FOR PARTIAL PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT**

**DIVISION FIVE**

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**(San Francisco Super.  
Co. No. 920940)**

**ORDER CERTIFYING  
OPINION FOR  
PARTIAL  
PUBLICATION AND  
DENYING  
REHEARING**

**THE COURT:**

It is ordered that the opinion filed herein on May 11, 2000, be certified for publication with the exception of part IIA.

Appellants' petition for rehearing is denied.

Trial court:

San Francisco Superior Court

Trial judge:

Hon. William Cahill

Counsel for plaintiffs  
and appellants:

Robert Owen Divelbiss  
Divelbiss, Divelbiss & Bonzell

Robert Sheldon Beach

Counsel for defendant  
and appellant:

Louise H. Renne  
City Attorney  
Jeffrey Ira Margolis  
Patrick John Mahoney  
Deputy City Attorneys

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